

THE APPEAL PROCESS

**THREE CASE
STUDIES**

THE APPEAL PROCESS

Discharge was for incompetence, but not misconduct.

The final incident of a series was not misconduct.

The employer did not respond to the request for information.

No documents and/or first-hand witnesses were presented at the hearing.

THE APPEAL PROCESS

In every case, the Administrative Law Judge is listening for one thing:

Has the party with the burden of proof met that burden with credible testimony and exhibits. In a discharge case, that means showing “misconduct” and “connection with the work.”

THE APPEAL PROCESS

Case 1:

INCOMPETENCE

The worker's discharge was for declining store sales. No allegation of serious infractions. "Things were not working out."

THE APPEAL PROCESS

Case 1:

- **Fact-finding Review from Claimant:**

I was being let go; not a good fit.

- **Response from Employer's Rep:**
Claimant quit due to dissatisfaction with job.

- **Non-Monetary Determination:**
Claimant was discharged. No misconduct. No disqualification.

THE APPEAL PROCESS

Case 1:

- **Protest from Employer's Rep:**
Claimant was discharged due to misconduct and insubordination. No other details.

- **Non-Monetary Redetermination:**
Misconduct alleged, but no information to substantiate. No misconduct. No disqualification. Determination affirmed.

THE APPEAL PROCESS

Case 1:

■ Appeal from Employer's Rep:

“The claimant's actions constituted misconduct.” No details provided.

■ ALJ Hearing:

Employer's witness testified claimant was discharged because “things were not working out.” Previous discussions about store sales. Final event was failure to notify speaker of event cancellation. Claimant said he did same day.

THE APPEAL PROCESS

Case 1:

ALJ Decision:

Nothing in the testimony established “misconduct”. Declining sales are a failure to meet employer’s standard of performance. Burden of proof to establish discharge for work-connected misconduct not met by employer. No disqualification. Redetermination affirmed.

THE APPEAL PROCESS

Case 2:

SERIES OF INCIDENTS

Decline in work performance tracked
personal problems

Final incident was excusable

Other incidents had been pre-approved or
excused, according to claimant

No eyewitnesses testified for employer

THE APPEAL PROCESS

Case 2:

- **Fact-finding Review from Claimant:**

I had to care for my diabetic, blind Mother; got sick with flu and stayed home in accordance with directive of employer when sick.

- **Response from Employer:**
None

THE APPEAL PROCESS

Case 2:

Non-Monetary Determination:

Claimant was discharged. There had been disciplinary action initiated, but last offense was for illness. No misconduct. No disqualification.

THE APPEAL PROCESS

Case 2:

■ **Protest from Employer's Rep:**

Claimant was discharged for continued violations after prior warnings. Claimant knew further infractions could lead to termination.

■ **Non-Monetary Redetermination:**

Prior discipline, but final event excusable due to illness. No misconduct. No disqualification.

THE APPEAL PROCESS

Case 2:

■ **Appeal from Employer's Rep:**

Same wording as protest.

■ **ALJ Hearing:**

Claimant had been high performer, then sales declined; started arriving late regularly until discharge; failed to punch in. Claimant had to move diabetic/blind Mother to Michigan; started punching in when policy required it; absences due to illnesses and always called in.

Employer had no witness present to dispute.

THE APPEAL PROCESS

Case 2:

ALJ Decision:

Based on testimony, last incident was scheduled eye exam that lasted longer than expected; no testimony contradicting claimant's assertions that he always called in and that he followed punch-in policy once it was put into place. Employer did not carry its burden of proof to show misconduct. No disqualification.

THE APPEAL PROCESS

Case 2:

Board of Review (now, MCAC) Decision: Claimant had excessive tardinesses, and could only explain some of them. Once the employer meets its burden of proof, the burden shifts to the claimant to show why he was late the other days and should not have been considered to have engaged in misconduct. It appears he was going to work only when convenient for him, regardless of employer's interests. ALJ reversed. Claimant disqualified.

THE APPEAL PROCESS

Case 2:

Circuit Court Decision:

Board of Review (MCAC) reversed.
Claimant not disqualified. No
explanation given by Court.

THE APPEAL PROCESS

Case 3:

SINGLE INCIDENT

Claimant denied wrongdoing.

No eyewitnesses testified for employer

THE APPEAL PROCESS

Case 3:

- **Fact-finding Review from Claimant:**
Discharged, but reason unknown.
- **Response from Employer:**
Warning given on Oct. 8, 2008
(copy attached) relating to
offensive remark to co-worker.

THE APPEAL PROCESS

Case 3:

Non-Monetary Determination:

Claimant was discharged. Claimant had been warned previously about profanity. It was not a common practice in the workplace.

Discharge was for misconduct.

Disqualification imposed.

THE APPEAL PROCESS

Case 3:

■ **Protest from Claimant:**

I had good record, with top seniority and I suspect this was an excuse for a layoff for financial reasons. Profanity was common, and no signs prohibiting it.

■ **Non-Monetary Redetermination:**

Determination finding disqualification affirmed.

THE APPEAL PROCESS

Case 3:

Appeal from Claimant

I have no reprimands in my file. I never uttered profanity. The employer made that up. And there were no rules or signs against it.

THE APPEAL PROCESS

Case 3:

ALJ Hearing:

An incident occurred on June 4, 2009, and the claimant was verbally discharged the next day for being abusive and threatening to another employee. The claimant lacked veracity, but no witness to the event was presented by the employer.

THE APPEAL PROCESS

Case 3:

ALJ Decision:

Based on testimony, employer did not carry its burden of proof to show misconduct. No disqualification.

THE APPEAL PROCESS

Case 3:

- **Employer's Request for Rehearing:**
No explanation given for failing to present necessary witnesses at original hearing.

- **Order Denying Application for Rehearing:**
Denied, as parties had full opportunity to present witnesses at original hearing.